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4 UNITED STATES DISTRICT COURT
5 NORTHERN DISTRICT OF CALIFORNIA

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7 MAXIMINO SANTIAGO PEREZ,
8 Plaintiff,
9 v.
10 RON MURRAY, et al.,
11 Defendants.

Case No.[18-cv-01437-JSC](#)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS AS MOOT**

Re: Dkt. No. 5

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In this habeas petition, Petitioner Maximino Santiago Perez alleges that his prolonged detention in immigration custody violates his statutory and constitutional rights. The government's motion to dismiss the habeas petition as moot is now pending before the Court.¹ (Dkt. No. 5.) Petitioner has not opposed the motion. After carefully considering the arguments and briefing submitted, the Court concludes that oral argument is unnecessary, *see* Civ. L.R. 7-1(b), VACATES the June 13, 2018 hearing, and GRANTS the motion to dismiss. Because petitioner has been granted the relief sought in his petition, the petition is moot and the Court lacks subject matter jurisdiction.

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BACKGROUND

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Petitioner Maximino Santiago Perez ("Petitioner") was arrested on August 19, 2017 for allegedly committing Lewd Acts on a Child Under 14 in violation of California Penal Code section 288(a). (Dkt. No. 1 at ¶ 4.) Three days later, he was released pursuant to California Penal Code section 849 which authorizes a peace officer to release a person from custody if there are insufficient grounds to file a criminal complaint against the person. (*Id.* at ¶ 29.) Immigration and

¹ Both parties have consented to the jurisdiction of a magistrate judge pursuant to 28 U.S.C. § 636(c). (Dkt. Nos. 2, 4)

1 Customs Enforcement (“ICE”) detained him immediately upon his release. (*Id.* at ¶ 3.) Two
2 months later, Petitioner had a bond redetermination hearing and an Immigration Judge denied
3 bond based on dangerousness. (*Id.* at ¶ 4.)

4 Four months after this denial, Petitioner filed this Petition for Writ of Habeas Corpus
5 accompanied by an Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary
6 Injunction. (Dkt. No. 1.) The petition alleged that his prolonged detention in ICE custody
7 violated his rights under 8 U.S.C. § 1231(a) and 8 U.S.C. § 1226(c), as well as his due process
8 rights under the Fifth Amendment and the Fourteenth Amendment. (Dkt. No. 1 at ¶ 40-53; Dkt.
9 No. 1-3.) On March 12, 2018, the Court issued an Order to Show Cause requiring the government
10 to file its answer in 60 days. (Dkt. No. 3.) Two weeks later, Petitioner had a new bond hearing
11 and the Immigration Judge ordered him released on bond. (Dkt. No. 5-1 at ¶ 4.) Petitioner was
12 released from immigration custody the next day. (Dkt. No. 5-1 at ¶ 4.) The government thereafter
13 filed the underlying motion to dismiss the habeas petition as moot under Federal Rule of Civil
14 Procedure 12(b)(1) for lack of subject matter jurisdiction. (Dkt. No. 5.)

LEGAL STANDARD

16 Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a defendant may move to
17 dismiss a claim for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Federal courts are
18 courts of limited jurisdiction and the burden of establishing that a case falls within federal
19 jurisdiction is on the party asserting jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
20 U.S. 375, 377 (1994). Federal jurisdiction requires a live case or controversy at every stage of
21 litigation. U.S. Const. art. III, § 2, cl. 1; *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013). If, at
22 any point during litigation, an event occurs such that there is no longer a live case or controversy
23 upon which relief can be granted, the claim is moot and must be dismissed. *Am. Rivers v. Nat'l
24 Marine Fisheries Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997).

DISCUSSION

26 The government contends that as Petitioner is no longer in ICE custody the habeas petition
27 is moot because there is no live case or controversy upon which the Court can grant relief and no
28 exception to the mootness doctrine applies. Petitioner has not opposed the motion; accordingly,

1 the Court finds that there is no dispute that Petitioner is no longer in ICE custody.

2 **A. There Is No Live Controversy**

3 Where, as here, a habeas corpus petitioner has been released from custody, there is no live
4 case or controversy unless there is “some remaining ‘collateral consequence’ that may be
5 redressed by success on the petition.” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). For a
6 collateral consequence to present a continuing live case or controversy, it must be a concrete legal
7 disadvantage, and not merely a speculative or contingent injury. *See Spencer v. Kemna*, 523 U.S.
8 1, 14-16 (1988) (rejecting petitioner’s arguments that his petition to invalidate an order revoking
9 his parole was not moot because of the potential consequences a parole revocation could have on
10 future civil or criminal proceedings as too contingent or speculative); *see also Domingo-Jimenez v.*
11 *Lynch*, No. C 16-05431 WHA, 2017 WL 235194, *1-3 (N.D. Cal. Jan. 19, 2017) (rejecting
12 petitioner’s argument that the allegedly unconstitutional reliance on a police report to deny him
13 bond at an earlier bond hearing could negatively impact his asylum proceedings and potential
14 future bond hearings as too speculative, and dismissing petitioner’s habeas petition as moot).

15 Because Petitioner did not oppose the government’s motion, Petitioner has not identified
16 any collateral consequences which could be redressed by success on his habeas petition. There is
17 thus no live case or controversy upon which the Court can grant relief.

18 **B. No Exception Applies**

19 There are two exceptions to the mootness doctrine, each of which allows a case to survive
20 despite the absence of a live controversy: 1) the voluntary cessation exception, and 2) the matters
21 capable of repetition, yet evading review exception. *Friends of the Earth, Inc. v. Laidlaw Envtl.*
22 *Servs., Inc.*, 528 U.S. 167, 190 (2000).

23 **1. Voluntary Cessation**

24 The voluntary cessation exception applies when (1) there is a voluntary cessation of the
25 allegedly illegal activity; (2) the cessation arises because of the litigation; and (3) there is a
26 reasonable expectation that the alleged wrong will be repeated. *Sze v. INS*, 153 F.3d 1005, 1008
27 (9th Cir. 1998). “The heavy burden of persuad[ing] the court that the challenged conduct cannot
28 reasonably be expected to start up again lies with the party asserting mootness.” *Friends of the*

1 *Earth*, 528 U.S. at 189 (internal citation and quotation marks omitted). The government cannot
2 shift this burden to the petitioner; rather, it must show that it is “absolutely clear” that it is not
3 reasonably likely that they will subject petitioner to the same challenged behavior. *See Rosemere*
4 *Neighborhood Ass’n v. U.S. Envtl. Prot. Agency*, 581 F.3d 1169, 1174 (9th Cir. 2009).

5 In *Domingo-Jimenez*, the court concluded that that the voluntary cessation exception did
6 not apply where petitioner was already free on bond and the police report that formed the basis for
7 petitioner’s bond denial was already resolved, because any potential new arrest would not be
8 related to the incident that formed the basis of petitioner’s previous criminal prosecution, and
9 would therefore not constitute a repetition of the same alleged wrong. *Id.* at 2017 WL 235194, at
10 *4. Likewise, in *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991), the Ninth Circuit found
11 that the exception did not apply where the government filed a declaration stating that “[a]bsent
12 [petitioner’s] reinvolvement with the criminal justice system, a change in the Cuban government
13 enabling him to return to Cuba, or the willingness of a third country to accept him, he will be
14 paroled for another year.”

15 Here, the government has provided copies of the Immigration Judge’s order which show
16 that he was released on \$6,000 bond; thus, unless Petitioner violates the conditions of his release
17 or otherwise has further law enforcement contacts unrelated to his initial detention, he will remain
18 free on bond such that the basis for his claim here is unlikely to recur. Because there is no
19 reasonable expectation that the basis of Petitioner’s habeas claim will reoccur, the third prong of
20 the voluntary cessation exception does not apply. The second prong—that the change was the
21 result of the litigation—also appears to be missing. That is, Petitioner received his new bond
22 hearing because the Immigration Judge granted his motion for a bond redetermination hearing on
23 March 21, 2018. (Dkt. No. 5-2 at 3.) From this, the Court can infer that Petitioner received the
24 new hearing because of his motion, and not because of this habeas petition. The voluntary
25 cessation exception thus does not apply.

26 **2. Matters Capable of Repetition**

27 The matters capable of repetition, yet evading review exception is limited to “extraordinary
28 cases” in which (1) the duration of the allegedly illegal activity is too short to be fully litigated

1 before it ceases; and (2) there is a reasonable expectation that the plaintiff will be subjected to the
2 same allegedly illegal activity again. *Doe v. Madison Sch. Dist.* No. 321, 177 F.3d 789, 798 (9th
3 Cir. 1999). To satisfy this exception, there must be a reasonable expectation that the same
4 controversy will reoccur between the same litigants. *Lee v. Schmidt-Wenzel*, 766 F.2d 1387, 1390
5 (9th Cir. 1985). A speculative or contingent possibility that a plaintiff may be subjected to same
6 activity again does not satisfy the matters capable of repetition exception. *Id.* In contrast to the
7 voluntary cessation exception, the petitioner bears the burden of showing that this exception
8 applies. *Id.* For this reason alone the exception cannot apply—petitioner has made no arguments
9 in response to the government’s motion to dismiss.

10 **CONCLUSION**

11 For the reasons stated above, the Court GRANTS the government’s motion to dismiss
12 petition for writ of habeas corpus as moot.

13 This Order disposes of Docket No. 5. The Clerk shall close the case.

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15 **IT IS SO ORDERED.**

16 Dated: June 6, 2018

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JACQUELINE SCOTT CORLEY
United States Magistrate Judge